

Mr. WetherSpoon
PLI 14730

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-196406

DATE: August 25, 1980

MATTER OF: Black & Decker (U.S.), Inc.

DIGEST:

[Protest Alleging Awardee Was Not Eligible For 8(a) Subcontract]

Question of whether firm is eligible for assistance under section 8(a) of Small Business Act is matter for determination by Small Business Administration. Judgmental determinations, such as those protested here, concerning 8(a) eligibility will not be questioned absent showing of fraud or bad faith on part of Government officials. Such showing has not been made.

Black & Decker (U.S.), Inc. (Black & Decker), protests the proposed award, by the Small Business Administration (SBA) to California Power Systems, Inc. (CPS), of a subcontract for power tools under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), as amended by Pub. L. 95-507, October 24, 1978, 92 Stat. 1757. Black & Decker alleges that CPS is not eligible to receive an 8(a) subcontract because it does not meet the requirements set forth in two provisions of SBA's standard operating procedures. According to Black & Decker, CPS cannot meet the requirements that 8(a) concerns enter into and successfully compete in the commercial market, and that they perform 50 percent of the dollar amount of the subcontract manufacturing with their own labor force.

Whether a firm is eligible for a subcontract under the 8(a) program is a matter for determination by the SBA and not this Office. Orincon Corporation, B-194053, July 19, 1979, 79-2 CPD 39. Our review of SBA determinations under the 8(a) program is limited to determining whether SBA has followed its regulations. Tidewater Protective Services, Inc., B-190957, January 13, 1978, 78-1 CPD 33. Because

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of the broad discretion afforded SBA under the Small Business Administration Act, judgmental decisions, such as those involved here, will not be questioned absent a showing of fraud or bad faith on the part of Government officials. Jets Services, Inc., B-186066, May 4, 1976, 76-1 CPD 300. Fraud or bad faith is not shown by an allegation that SBA has violated standard operating procedures, since they may be waived or revoked. Tidewater Protective Services, Inc., *supra*. Therefore, we will not question SBA's determination that CPS is eligible to receive a subcontract.

The protest is dismissed.

Harry R. Van Cleave
for Milton J. Socolar
General Counsel